HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 3236 of 2001 (M/S)

Sri Satish Kumar

Vs

State of Uttar Pradesh, Through its

Collector, Nainital and others.

Approved for reporting.

Not approved for reporting

Date of decision 01.07.2006.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL

NAINITAL

WRIT PETITION NO. 3236 (MS) OF 2001

(Old No. 17334 /94)

Sri Satish Kumar,
S/o Sri Dewan Chandra,
R/o Village Simla Pistaur,
Tehsil-Kichha,
District-Nainital. .....Petitioner.

Versus

1. State of Uttar Pradesh, through its Collector, Nainital.
2. District Judge, Nainital.
3. Sub Divisional Magistrate and Prescribed Authority (under U.P. Public Premises Eviction of Unauthorised Occupants Act, 1972), Kichha at Rudrapur, District-Nainital. .....Respondents.

Dated: 01.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Adhikari, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 30.06.1992 and the order dated 11.11.1993 passed by the Prescribed Authority as well as by the appellate authority.

Briefly stated, according to the case of the petitioner, he is in possession of Khasra Plot No. 637 and 638 measuring 2 Bigha 13 biswa of Village Simla Pistaur, Tehsil Kichha District Nainital.

The petitioner has submitted that the land of the petitioner is an agricultural land and he is bhumidhar of the said land. The proceedings under Section 4(1) of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 were initiated against the petitioner.

The petitioner has filed his reply stating therein that he is in possession from 1377 Fasli and he is entitled for regularization and the land is an agricultural land as he has sown the crops, which is ready for harvesting.

The prescribed authority has directed for eviction of the petitioner on 30.06.1992.

Aggrieved by the said order, the petitioner went in appeal. The said appeal was registered as Appeal No. 343 of 1992 Satish Kumar Vs. State. The appellate Court has also passed an order to that effect.

Counsel for the petitioner has submitted that the land is not covered under definition of Public Premises (Eviction of Unauthorised Occupants) Act and is exempted under the Act.

In Ranjeet Singh Vs. State of U.P. & others [2002(1) ELC 508 (HC), this Court has passed the following order to the following effect:-

"4. Learned counsel for the petitioners contended that the proceedings relating to agricultural land could not have been initiated under the Uttar Pradesh (Eviction of Unauthorised Occupants) Act. If the petitioners were unauthorized occupants on any agricultural land belonging to State, the proceedings under Section 122-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 could be drawn against them, as the land held by a tenure holder for the time being is not a public premises.

5. I find force in the contention of the learned counsel for the petitioners. The definition of "land" as defined under Section 3(4) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 reads as under:

"Land" means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming."

6. In the present case, the disputed land is admittedly used for the petitioners for the purposes of agricultural as is evident from the statement on record that the petitioners are in occupation since 1380 Fasli. The U.P. Zamindari Abolition & Land Reforms Act itself provides procedure for eviction of unauthorized occupants under Section 122-B of the U.P. Zamindari Abolition & Land Reforms Act. The agricultural land is not covered under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, as is evident from the definition of U.P. Public premises (Eviction of Unauthorised Occupants) Act, 1972, which reads as under:-

"2(b) 'Premises' means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes,-

(i) the garden, grounds and out houses, if any, appertaining to such building or part of a building; and

(ii) Any fittings or fixtures affixed to or any furniture supplied with such building or art of a building for the more beneficial enjoyment thereof.

but does not include land which for the time bering is held by a tenure holder under any law relating to land tenures."

"2(e) 'Public premises' means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any premises belonging to or taken on lease by or on behalf of:

(v) any company as defined in Section 3 of Companies Act, 1956 in which not less than fifty-one per cent of the paid up share capital is held by the State Government; or

(vi) any local authority; or

(vii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government; or

(viii) any society registered under the Societies Registration Act, 1860, the governing body whereof consists under the rules or regulation of the society, wholly or public officer, or nominees of the State Government, or both;

and also includes,--

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds or land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures);

(ii) Any premises acquired under the land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions."

7. Therefore, a conjoin reading of the definitions given under the Uttar Pradesh Public Premises (Eviction of

Unauthorised Occupants) Act, 1972 of the premises and public premises clearly exclude the application of the provisions of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act in case a tenure holder holds the land for the time being. In the present case, the evidence is on record that the petitioners were in possession on the disputed land from 1380 Fasli. Therefore, at the time when proceedings were initiated for eviction, the petitioners were a tenure holder for the time being.

8. Hence the proceedings could only be drawn under U.P. Zamindari Abolition & Land Reforms Act and could not have been drawn under the Uttar Padesh Public Premises (Eviction of Unauthorised Occupants) Act. Thus, the proceedings initiated under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, which gave rise to these writ petitions, were without jurisdiction."

A writ of certiorari is issued quashing the order dated 30.06.1992 and 11.11.1993 passed by the Prescribed Authority as well as by the appellate Authority.

In view of the aforesaid, the notice issued under section 4(1) of the U.P. Public premises (Eviction of Unauthorised Occupants) Act, 1972 is discharged.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

01.07.2006

Rathour